

**UNITED STATES DISTRICT COURT  
CENTRAL DISTRICT OF CALIFORNIA**

JESUS PIMENTEL, et al., ) Case No. CV 14-1371 FMO (Ex)  
Plaintiffs, )  
v. )  
CITY OF LOS ANGELES, )  
Defendant. )  
ORDER Re: PENDING MOTION

Having reviewed and considered all the briefing filed with respect to the City of Los Angeles's ("City" or "defendant") Motion to Dismiss the First Amended Complaint for Failure to State a Claim Upon Which Relief May Be Granted ("Motion," Dkt. No. 32), the court concludes that oral argument is not necessary and concludes as follows. See Fed. R. Civ. P. 78; Local Rule 7-15; Willis v. Pac. Mar. Ass'n, 244 F.3d 675, 684 n. 2 (9th Cir. 2001).

## **INTRODUCTION**

On February 24, 2014, Jesus Pimentel (“Pimentel”) and David R. Welch (“Welch”) filed a Complaint against defendant on behalf of themselves and all persons similarly situated. (See Complaint, Dkt. No. 1). The Complaint asserted causes of action for violations of the: (1) Excessive Fines Clause of the Eighth Amendment of the United States Constitution pursuant to 42 U.S.C. § 1983; (2) excessive fines provision of Article I, Section 17 of the California Constitution; (3) Due Process Clause of the Fourteenth Amendment of the United States Constitution pursuant 42 U.S.C. § 1983; and (4) due process clause of Article I, Section 7(a) of

1 the California Constitution. (See id. at ¶¶ 35-51). The Complaint challenges the City's practice  
 2 of "charging those who receive tickets for expired parking meters disproportionately excessive  
 3 penalties." (Id. at ¶ 1).

4 Pimentel and Welch subsequently filed a First Amended Complaint ("FAC," Dkt. No. 29),  
 5 asserting the same causes of action. (See FAC at ¶¶ 56-72). The FAC also named as additional  
 6 plaintiffs Jeffrey O'Connell ("O'Connell"), Edward Lee ("Lee"), Wendy Cooper ("Cooper"), Jaclyn  
 7 Baird ("Baird"), Anthony Rodriguez ("Rodriguez"), Rafael Buelna ("Buelna"), and Elen Karapetyan  
 8 ("Karapetyan") (collectively, "additional plaintiffs," together with Pimentel and Welch, "plaintiffs").  
 9 The class action allegations were brought on behalf of a class defined as "all persons who were  
 10 assessed and/or paid the penalties under the Schedule for parking at an unpaid or expired  
 11 meter[.]" (Id. at ¶ 48).

## FACTUAL ALLEGATIONS

### I. PLAINTIFFS.

14 On May 29, 2013, Pimentel received a parking citation for an expired parking meter under  
 15 § 88.13(b) of the Los Angeles Municipal Code (the "Code"). (See FAC at ¶ 7). Under § 89.60 of  
 16 the Code, the initial penalty for such a violation is \$63.00. (See id.). On or about June 21, 2013,  
 17 the City issued and mailed a Notice of Delinquent Parking Violation ("Notice") to Pimentel, advising  
 18 him that the due date to pay the initial penalty was July 5, 2013. (See id. at ¶ 8). The Notice also  
 19 advised Pimentel that failure to pay the penalty by the due date would "result in the City of Los  
 20 Angeles imposing increased penalties and the withholding of [his] vehicle registration by the  
 21 Department of Motor Vehicles." (Id.). Finally, the Notice warned Pimentel that the City "may also  
 22 subject [his] vehicle to immobilization (booting) or impoundment, . . . or a civil judgment[.]" (Id.).

23 Pimentel was unable to pay the initial penalty by the July 5, 2013 due date "because he did  
 24 not then have the funds to pay without jeopardizing his ability to pay more critical financial  
 25 obligations." (FAC at ¶ 9). The City "likely mailed another notice to Pimentel . . . assessing an  
 26 additional 100% penalty, pursuant to [§] 89.60 of the Code," which increased the penalty to  
 27 \$126.00. (See id.). Pimentel was unable to pay the increased penalty due to financial hardship.  
 28 (See id.). As a result of his inability to pay the increased penalty, the City, on or about August 23,

1 2013, mailed Pimentel a “Delinquent Status” notice (“Delinquent Status Notice”), which imposed  
 2 an additional penalty of \$28 – despite the Code’s provision of a \$26 additional penalty – thereby  
 3 increasing the “total fine and penalty” to \$154.00. (See id. at ¶ 10). The Delinquent Status Notice  
 4 also imposed a \$21.00 “collection fee” and set forth a “total due” amount of \$175.00. (See id.).  
 5 The Delinquent Status Notice advised Pimentel that “[t]he Department of Motor Vehicles has been  
 6 notified to withhold registration of [his] annual vehicle registration pending resolution of the  
 7 citations[,]” that “[i]f [he] ha[s] delinquent citations, [his] vehicle may be seized[,]” and that failure  
 8 to pay could subject Pimentel “to further collection activity such as a civil judgment or an  
 9 interception of [his] state tax refunds.” (Id.) (emphasis omitted). Pimentel did not pay the “total  
 10 due” amount at that time due to financial hardship. (See id.). He eventually paid the \$175.00  
 11 amount in order to register his car. (See id. at ¶ 11).

12 On February 25, 2013, Welch received a citation for parking at an expired parking meter  
 13 and was assessed an initial penalty of \$63.00. (See FAC at ¶ 12). “[W]ithin the following 30 days  
 14 it is likely that the City issued and then mailed to Welch” a Notice identical to the one sent to  
 15 Pimentel. (See id. at ¶ 13) (Notice advising Welch of the due date and risk of increased penalties,  
 16 withholding of registration, booting, impoundment, and civil judgment). Welch did not pay the  
 17 initial penalty by the due date. (See id. at ¶ 14). As with Pimentel, the City “likely mailed another  
 18 notice” advising Welch that it was assessing an additional 100% penalty, increasing the penalty  
 19 to \$126.00. (See id.). Welch did not pay the increased penalty by the due date. (See id. at ¶ 15).  
 20 On or about May 23, 2012, as a result of Welch’s nonpayment, the City mailed Welch a Delinquent  
 21 Status Notice imposing an additional penalty of \$28 – instead of \$26 – and an additional \$21  
 22 collection fee, which increased the total amount due to \$175.00. (See id.). The Delinquent Status  
 23 Notice also provided the above-described warnings regarding vehicle registration, vehicle seizure,  
 24 and further collection activity. (See id.). On or about July 30, 2013, Welch paid the \$175.00. (See  
 25 id. at ¶ 16).

26 The FAC describes similar factual scenarios for the other plaintiffs. O’Connell received  
 27 several parking meter citations in the City of Los Angeles during the previous two years, which  
 28 caused him to receive the same notices and incur the same fines and penalties as Pimentel and

1 Welch. (See FAC at ¶ 18-19). O'Connell was unable to pay the citations due to financial hardship  
 2 (see id. at ¶ 19), although he "eventually entered into an installment payment plan with the City"  
 3 to pay his outstanding penalties (see id. at ¶ 20). However, he was ultimately unable to make the  
 4 scheduled payments, and O'Connell's vehicle was towed and impounded. (See id.). O'Connell  
 5 "has not had the financial wherewithal to pay to retrieve his vehicle[,] and he "has suffered lost  
 6 income and financial hardship as a result[.]" (Id.).

7 Lee received multiple parking meter tickets in Los Angeles in 2013. (See FAC at ¶ 22).  
 8 Similar to O'Connell, Lee "made payments on the parking meter tickets, but he could not afford  
 9 to pay them on time[.]" nor could he "afford the late penalties and fees imposed by the City." (Id.).

10 Cooper received a parking citation for an expired parking meter in 2013. (See FAC at ¶  
 11 23). She "missed the due date for paying the ticket" due to the illness and death of her father  
 12 around the same time. (See id.). On January 2, 2014, Cooper contacted the City Parking  
 13 Violations Bureau and requested that the late penalties and fees be waived. (See id. at ¶ 24).  
 14 She was advised to send a letter explaining her situation and to include payment for the original  
 15 penalty amount of \$63, along with proof of her personal difficulties. (See id.). Cooper sent the  
 16 letter and payment, but has received no response to her letter. (See id.).

17 Baird received seven citations for expired parking meters. (See FAC at ¶¶ 25-28). She did  
 18 not pay the penalties for the first three citations due to financial difficulties and, as a result, was  
 19 unable to register her car. (See id. at ¶ 25). On January 17, 2014, Baird received the fourth  
 20 citation for parking at an expired meter. (See id. at ¶ 26). She was unable to pay that citation on  
 21 time, was assessed an additional fee, and ultimately paid a penalty of \$151. (See id.). On  
 22 February 2, 2014, Baird received her fifth parking citation. (See id. at ¶ 27). Again, she was  
 23 unable to pay the initial penalty on time and was assessed an additional \$63, ultimately paying a  
 24 penalty of \$126. (See id.). On May 14 and 23, 2014, Baird received her sixth and seventh parking  
 25 citations, respectively, which she was unable to pay due to financial hardship. (See id. at ¶ 28).  
 26 Baird's car "was impounded due in substantial part to not paying her parking meter tickets, and  
 27 the penalties and fees assessed on them." (Id. at ¶ 29). She is unable to pay the approximately  
 28 \$1,300 required to release her vehicle. (See id.).

1       On January 22, 2014, Rodriguez received a citation for an expired parking meter despite  
 2 having sufficient funds in the meter to cover the time period he parked. (See FAC at ¶ 30). Within  
 3 15 days of issuance of the ticket, Rodriguez went to the Van Nuys office of the City's Parking  
 4 Violations Bureau to contest the ticket. (See *id.* at ¶ 31). Rodriguez filled out and submitted an  
 5 "Initial Review Request." (See *id.*). He also requested a copy of the parking meter service record  
 6 and the citing officer's performance record. (See *id.*). Even though he paid with coins, Rodriguez  
 7 received a letter from the Parking Violations Bureau requesting that he provide his credit card  
 8 statement showing the payments made to the City for parking at the meter on the day in question.  
 9 (See *id.* at ¶ 32). Eventually, "the City responded to Rodriguez's review request with a denial that  
 10 the meter had been operating improperly." (*Id.* at ¶ 33). Ultimately, the City waived late penalties  
 11 on the ticket but still required Rodriguez to pay the initial \$63 penalty and a \$2 processing fee,  
 12 "which he paid on May 2, 2014, and which imposed a financial hardship on him." (See *id.*).

13       On January 17, 2014, Buelna received a citation for parking at an expired meter. (See FAC  
 14 at ¶ 34). Buelna alleges that he "had clearly displayed his disabled placard, which was hanging  
 15 from the rear view mirror, so he should not have received the ticket." (See *id.*). Although Buelna  
 16 "planned to pay the initial \$63 fine . . . by saving \$20 from three Social Security checks[,] the  
 17 penalties associated with the citation increased to \$175 before he was able to pay. (See *id.* at ¶  
 18 35). "Such a sum imposes an egregious hardship" upon Buelna. (*Id.*).

19       Karapetyan received six parking meter citations, which she could not afford to pay on time.  
 20 (See FAC at ¶ 36). The City has assessed \$175 in penalties and fees as to each of these  
 21 citations, and while she has paid two of them, she "is presently unable to pay the remainder of  
 22 them." (See *id.*).

## 23 II. PARKING PENALTIES IN LOS ANGELES.

24       Section 89.60 of the Code, which sets forth a schedule of civil penalties for failing to pay  
 25 a parking meter (the "Schedule"), was established by defendant through its City Council within the  
 26 last four years as part of a schedule of civil parking penalties (the "Schedule"). (See FAC at ¶ 37).  
 27 Plaintiffs allege that the parking penalties set by the Schedule exceed the penalties established  
 28 by the City in prior years for the same parking violations by approximately 50%. (See *id.* at ¶ 38).

1 They further allege that the large increase in penalties is due, in substantial part, to the City's  
 2 efforts to "increase its revenues and improve its fiscal situation in response to the fallout from the  
 3 2008-2009 economic crisis." (*Id.*). Although California Vehicle Code § 40203.5(a) gives cities the  
 4 power to establish parking penalties, it "directs [them] to 'standardize parking penalties' with other  
 5 parking ticket issuing agencies within the same county, to the extent possible." (*Id.* at ¶ 39).  
 6 Plaintiffs allege that the City charges "substantially higher penalties than many neighboring cities  
 7 in Los Angeles County[,] such as Pasadena and Glendale. (*See id.*).

8 According to plaintiffs, "the City charges variable rates to purchase time at its parking  
 9 meters depending on the meter's location[,] or 'zone.'" (FAC at ¶ 45). In some of the higher rate  
 10 zones, "a person paying for meter parking can purchase six minutes of time for \$.50, 18 minutes  
 11 of time for \$1.50, 30 minutes of time for \$3.00, and an hour of time for \$5.00." (*Id.*). Thus, plaintiff  
 12 alleges, considering the amount of money it would take to buy additional time, "the City's \$63.00  
 13 initial penalty . . . is 130 times the additional amount a person who is less than [six] minutes over  
 14 the meter would have had to pay to avoid the ticket, over 43 times the additional amount a person  
 15 who is less than 18 minutes over the meter would have had to pay to avoid the ticket, 21 times the  
 16 additional amount a person who is less than 30 minutes over the meter would have had to pay to  
 17 avoid the ticket, and over 12 times the additional amount a person who is less than 60 minutes  
 18 over the meter would have had to pay to avoid the ticket." (*Id.*). Further, "[i]n lower zone areas  
 19 where it is cheaper to park[,] these multipliers necessarily are proportionally higher." (*Id.*).  
 20 Moreover, "the second 100% \$63 late payment penalty effectively doubles the above multipliers."  
 21 (*Id.*).

22 For these reasons, plaintiff alleges that "[t]he parking meter expiration penalties are  
 23 unreasonable and oppressive, and grossly disproportionate to the seriousness of the violation of  
 24 the City ordinance barring parking at a meter beyond the time paid to park, as well as to those who  
 25 receive tickets for parking at a meter without paying at all." (FAC at ¶ 46). Making matters worse,  
 26 "[i]mposition of these penalties is particularly onerous as to and disproportionately affects low  
 27 income or even average income workers in the Los Angeles area . . . because they are not as well

1 positioned to pay the penalties or the collection fees, and disproportionately suffer injury if they  
 2 do not pay them." (Id.).

### **LEGAL STANDARD**

4 A motion to dismiss for failure to state a claim should be granted if plaintiff fails to proffer  
 5 "enough facts to state a claim to relief that is plausible on its face." Bell Atl. Corp. v. Twombly, 550  
 6 U.S. 544, 570, 127 S.Ct. 1955, 1974 (2007); see Ashcroft v. Iqbal, 556 U.S. 662, 678, 129 S.Ct.  
 7 1937, 1949 (2009); Cook v. Brewer, 637 F.3d 1002, 1004 (9th Cir. 2011). "A claim has facial  
 8 plausibility when the plaintiff pleads factual content that allows the court to draw the reasonable  
 9 inference that the defendant is liable for the misconduct alleged." Iqbal, 556 U.S. at 678, 129 S.Ct.  
 10 at 1949; Cook, 637 F.3d at 1004; Caviness v. Horizon Cnty. Learning Ctr., Inc., 590 F.3d 806, 812  
 11 (9th Cir. 2010). Although the plaintiff must provide "more than labels and conclusions, and a  
 12 formulaic recitation of the elements of a cause of action will not do." Twombly, 550 U.S. at 555,  
 13 127 S.Ct. at 1965; see Iqbal, 556 U.S. at 678, 129 S.Ct. at 1949; see also Cholla Ready Mix, Inc.  
 14 v. Civish, 382 F.3d 969, 973 (9th Cir. 2004), cert. denied, 544 U.S. 974 (2005) ("[T]he court is not  
 15 required to accept legal conclusions cast in the form of factual allegations if those conclusions  
 16 cannot reasonably be drawn from the facts alleged. Nor is the court required to accept as true  
 17 allegations that are merely conclusory, unwarranted deductions of fact, or unreasonable  
 18 inferences.") (citations and internal quotation marks omitted). "Specific facts are not necessary;  
 19 the [complaint] need only give the defendant[s] fair notice of what the . . . claim is and the grounds  
 20 upon which it rests." Erickson v. Pardus, 551 U.S. 89, 93, 127 S.Ct. 2197, 2200 (2007) (per  
 21 curiam) (citations and internal quotation marks omitted); see Twombly, 550 U.S. at 555, 127 S.Ct.  
 22 at 1964.

23 In considering whether to dismiss a complaint, the court must accept the allegations of the  
 24 complaint as true, Erickson, 551 U.S. at 93-94, 127 S.Ct. at 2200; Albright v. Oliver, 510 U.S. 266,  
 25 268, 114 S.Ct. 807, 810 (1994), construe the pleading in the light most favorable to the pleading  
 26 party, and resolve all doubts in the pleader's favor. Jenkins v. McKeithen, 395 U.S. 411, 421-22,  
 27 89 S.Ct. 1843, 1849 (1969); Berg v. Popham, 412 F.3d 1122, 1125 (9th Cir. 2005). Dismissal for  
 28 failure to state a claim can be warranted based on either a lack of a cognizable legal theory or the

1 absence of factual support for a cognizable legal theory. See Mendiondo v. Centinela Hosp. Med.  
 2 Ctr., 521 F.3d 1097, 1104 (9th Cir. 2008). A complaint may be dismissed also for failure to state  
 3 a claim if it discloses some fact or complete defense that will necessarily defeat the claim.  
 4 Franklin v. Murphy, 745 F.2d 1221, 1228-29 (9th Cir. 1984).

## 5 DISCUSSION

6 Defendant argues that “the [FAC] fails to plead facts sufficient to suggest a plausible  
 7 scenario for claims under the Excessive Fines and Due Process clauses of the United States and  
 8 California Constitutions, and there is no reasonable likelihood that the [FAC] can be amended to  
 9 state a claim upon which relief may be granted.” (See Motion at 5). Although defendant combines  
 10 the excessive fines and due process standards under both the federal and California constitutions  
 11 in one argument, the court will address excessive fines and due process separately, as there is  
 12 a greater degree of difference between the standards than defendant suggests.<sup>1</sup> Then, the court  
 13 addresses defendant’s argument with respect to damages claims under the California Constitution  
 14 (see Motion at 14-15) and California’s claims filing requirements (see id. at 15-16).

### 15 I. EXCESSIVE FINES CLAUSE.

16 The Eighth Amendment provides that “[e]xcessive bail shall not be required, nor excessive  
 17 fines imposed, nor cruel and unusual punishments inflicted.” U.S. Const. amend. VIII. The  
 18 Excessive Fines Clause “limits the government’s power to extract payments, whether in cash or  
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 22 <sup>1</sup> Throughout its briefing, defendant conflates the gross proportionality test for claims under  
 23 the Excessive Fines Clause, Bajakajian, 524 U.S. at 336, 118 S.Ct. at 2037, and the “shocks the  
 24 conscience” test applicable to substantive due process violations under the Fourteenth  
 25 Amendment. (See, e.g., Motion at 7) (“the Excessive Fines Clause is not violated unless the court  
 26 can determine, as a matter of law, that a fine shocks the conscience.”); see also United States v.  
27 Salerno, 481 U.S. 739, 746, 107 S.Ct. 2095, 2101 (1987) (“So-called substantive due process  
 28 prevents the government from engaging in conduct that shocks the conscience, . . . or interferes  
 with rights implicit in the concept of ordered liberty”) (internal quotation marks omitted) (alteration  
 in the original); Corales v. Bennett, 567 F.3d 554, 568 (9th Cir. 2009) (substantive due process  
 “forbids the government from depriving a person of life, liberty, or property in such a way that  
 shocks the conscience or interferes with the rights implicit in the concept of ordered liberty.”)  
 (internal citations and quotation marks omitted)

1 in kind, as punishment for some offense.”<sup>2</sup> Austin v. United States, 509 U.S. 602, 609-10, 113  
 2 S.Ct. 2801, 2805 (1993) (emphasis and internal quotation marks omitted); see United States v.  
 3 Bajakajian, 524 U.S. 321, 328, 118 S. Ct. 2028, 2033 (1998), superseded on other grounds by  
 4 statute, as recognized in U.S. v. Del Toro-Barboza, 673 F.3d 1136, 1154 (9th Cir. 2012). Similarly,  
 5 Article 1, Section 17 of the California Constitution states, “[c]ruel or unusual punishment may not  
 6 be inflicted or excessive fines imposed.” Cal. Const. art. I, § 17. “This section is a state equivalent  
 7 to the Eighth Amendment.” Brownlee v. Burleson, 2006 WL 2354888, \*7 (E.D. Cal. 2006)  
 8 (recommending summary judgment on the California claim “[b]ecause this court finds that all  
 9 defendants are entitled to summary judgment on [the] Eighth Amendment Claim”); see also In re  
 10 Alva, 33 Cal.4th 254, 291 (2004) (“We see no basis to find a different meaning of ‘punishment’ for  
 11 state purposes than would apply under the Eighth Amendment.”); People ex rel. Lockyer v. R.J.  
 12 Reynolds Tobacco Co., 37 Cal.4th 707, 727-30 (2005) (considering federal and state case law  
 13 together in determining what factors were relevant to the constitutional “evaluation of the fine  
 14 assessed against the defendant.”). Therefore, given the similarity in the federal and state  
 15 constitutional provisions and the case law interpreting them, the court considers both provisions  
 16 together.

17 The Supreme Court has articulated “the standard of gross disproportionality” in evaluating  
 18 a claim arising under the Excessive Fines Clause. See Bajakajian, 524 U.S. at 336, 118 S.Ct. at  
 19 2037. “The touchstone of the constitutional inquiry under the Excessive Fines Clause is the  
 20 principle of proportionality [and t]he amount of the forfeiture must bear some relationship to the  
 21 gravity of the offense that it is designed to punish.” Id. at 334, 118 S.Ct. at 2036. When called  
 22 upon to determine whether a fine violates the Excessive Fines Clause, “the district courts . . . must  
 23 compare the amount of the forfeiture to the gravity of the [] offense. If the amount of the forfeiture

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25       <sup>2</sup> While the Supreme Court has stated that nonpunitive forfeitures “occupy a place outside the  
 26 domain of the Excessive Fines Clause[,]” Bajakajian, 524 U.S. at 331, 118 S. Ct. at 2035, the City  
 27 does not assert that the parking fines in this case are nonpunitive. (See, generally, Motion; see  
also id. at 14 (recognizing that some portion of the \$63.00 fine is “punitive in its purpose or  
 effect”)). Because the fines are “at least in part, punitive[,]” they are “subject to the Excessive  
 28 Fines Clause.” See United States v. Mackby, 339 F.3d 1013, 1015 (9th Cir. 2003), cert. denied,  
 541 U.S. 936 (2004).

1 is grossly disproportional to the gravity of the defendant's offense, it is unconstitutional." Id. at  
 2 336-37, 118 S.Ct. at 2037-38. Nevertheless, courts must bear in mind that "judgments about the  
 3 appropriate punishment for an offense belong in the first instance to the legislature[.]" id. at 336,  
 4 118 S.Ct. at 2037, and that a court's review of the propriety of a punishment will be inherently  
 5 imprecise. See id. "Both of these principles counsel against requiring strict proportionality between  
 6 the amount of a punitive forfeiture and the gravity of a criminal offense," id., and are thus taken  
 7 into account by the Supreme Court's adoption of the standard of gross proportionality.

8 In evaluating whether a fine is grossly disproportionate, courts "typically consider[] four  
 9 factors in weighing the gravity of the defendant's offense: (1) the nature and extent of the crime,  
 10 (2) whether the violation was related to other illegal activities, (3) the other penalties that may be  
 11 imposed for the violation, and (4) the extent of the harm caused." United States v. \$132,245.00  
 12 in U.S. Currency, 764 F.3d 1055, 1058 (9th Cir. 2014) (internal citations and quotation marks  
 13 omitted).

14 Defendant asserts that "the Excessive Fines Clause is not violated unless the court can  
 15 determine, as a matter of law, that a fine shocks the conscience[.]" and that "expired meter fines  
 16 cannot reasonably be described as egregious to the point of shocking the conscience." (Motion  
 17 at 7). "Where the connection between the forfeiture and the alleged reporting violation in  
 18 Bajakajian was found to be non-existent given that no actual harm had been caused, the plaintiffs'  
 19 parking violations do cause actual harm that bear an articulable correlation to the amount of the  
 20 fine." (Id. at 7-8). The City goes on to argue that parking at expired meters deprives the public  
 21 fisc of revenue and diminishes the City's supply of parking, and therefore, an articulable correlation  
 22 exists between the infractions and the fines. (See id.). That may be so, but the City's argument  
 23 highlights the reason that dismissal of the Eighth Amendment claim at this stage is unwarranted.  
 24 What portion of defendant's \$63 initial penalty or \$126 or \$175 increased penalty is punitive and  
 25 what portion bears some relationship to the gravity of the offense is a fact-based question.  
 26 Likewise, deprivation of the public fisc and of the necessary supply of short term parking are facts  
 27 that would tend to prove or disprove the proportionality of the injury suffered by the government  
 28 to the penalty imposed on plaintiffs. See, e.g., Wright v. Riveland, 219 F.3d 905, 918-19 (9th Cir.

1 2000) (reversing district court's dismissal of violation of the Excessive Fines Clause claims and  
 2 remanding for a factual determination of excessiveness). “[U]nless [the] court converts a Rule  
 3 12(b)(6) motion into a motion for summary judgment, [the] court cannot consider material outside  
 4 of the complaint (e.g., facts presented in briefs, affidavits, or discovery materials).” Waters v.  
 5 Howard Sommers Towing, Inc., 2011 WL 2601835, \*2 (C.D. Cal. 2011) (emphasis added).

6 Furthermore, while defendant may be correct that ability to pay is not a factor that plaintiffs  
 7 must prove to prevail on their excessive fines claim (see Motion at 8-10), it is relevant to the  
 8 proportionality analysis. See, e.g., Bajakajian, 524 U.S. at 335-36, 118 S.Ct. at 2037 (discussing  
 9 precedent requiring that fines should be “proportioned to the offense and that they should not  
 10 deprive a wrongdoer of his livelihood”); United States v. Levesque, 546 F.3d 78, 83-84 (1st Cir.  
 11 2008) (“The Supreme Court has made it clear that the notion that a forfeiture should not be so  
 12 great as to deprive a wrongdoer of his or her livelihood is deeply rooted in the history of the Eighth  
 13 Amendment.”); cf. Bajakajian, 524 U.S. at 340, n. 15, 118 S.Ct. at 2039, n. 15 (not addressing  
 14 ability to pay because “Respondent does not argue that his wealth or income are relevant . . . or  
 15 that full forfeiture would deprive him of his livelihood[,]” and because “the District Court made no  
 16 factual findings in this respect.”). This is especially true under California law, as the California  
 17 Supreme Court has stated that it considers “the defendant’s ability to pay” a factor in analyzing  
 18 proportionality under Bajakajian. See R.J. Reynolds, 37 Cal.4th at 728 (citing with approval City  
 19 and Cnty. of San Francisco v. Sainez, 77 Cal.App.4th 1302, 1322 (2000) (review denied May 10,  
 20 2000), which found that “we agree, that in the case of fines . . . the defendant’s ability to pay is a  
 21 factor under the Excessive Fines Clause.”) (internal quotation marks and citation omitted). That  
 22 the court may consider plaintiffs’ ability to pay further strengthens the court’s conclusion that  
 23 dismissal at this stage would be inappropriate. The effect of the parking fines and penalties on  
 24 the livelihoods of plaintiffs and their ability to pay present complex factual considerations that  
 25 cannot be determined on this Motion.

26 In short, the court finds that plaintiffs have articulated “sufficient factual matter, accepted  
 27 as true, to state a claim to relief that is plausible on its face.” Iqbal, 556 U.S. at 678, 129 S.Ct. at  
 28 1949 (internal quotation marks and citation omitted). Accordingly, defendant’s motion to dismiss

1 the plaintiffs' first and second causes of action for alleged violations of the excessive fines  
 2 provisions of the federal and California constitutions is denied.

3 II. DUE PROCESS.

4 Plaintiffs' third and fourth causes of action arise under the Fourteenth Amendment of the  
 5 United States Constitution and Article 1, Section 7 of the California Constitution, respectively.  
 6 Both provisions provide that a person may not be deprived of property without due process of law.  
 7 See U.S. Const., amend. XIV & Cal. Const. art. 1, § 7. Like the provisions with respect to  
 8 excessive fines, both due process provisions are interpreted similarly, see, e.g., R.J. Reynolds,  
 9 37 Cal.App.4th at 727-30, and the court considers them together.

10 The United States Supreme Court has held that “[n]o State shall . . . deprive any person  
 11 of life, liberty, or property, without due process of law[.]” U.S. Const., amend. XIV, § 1. The  
 12 Supreme Court has further held the Due Process Clause “to cover a substantive sphere as well,”  
 13 Cnty. of Sacramento v. Lewis, 523 U.S. 833, 840, 118 S.Ct. 1708, 1713 (1998), “barring certain  
 14 government actions regardless of the fairness of the procedures used to implement them.” Daniels  
 15 v. Williams, 474 U.S. 327, 331, 106 S.Ct. 662, 665 (1986); see also Zinermon v. Burch, 494 U.S.  
 16 113, 125, 110 S.Ct. 975, 983 (1990) (noting that substantive due process violations are actionable  
 17 under § 1983). Substantive due process thus embodies society’s desire to “prevent government  
 18 from abusing [its] power, or employing it as an instrument of oppression.” Collins v. Harker  
 19 Heights, 503 U.S. 115, 126, 112 S.Ct. 1061, 1069 (1992) (internal quotation marks omitted).

20 The standard that has emerged from this doctrine is that legislative action that deprives an  
 21 individual of life, liberty, or property (and that does not implicate a fundamental right) must be  
 22 reasonably related to a legitimate governmental interest. See Lewis, 523 U.S. at 846, 118 S.Ct.  
 23 at 1716. By the same token, government “conduct that shocks the conscience and violates the  
 24 decencies of civilized conduct” violates due process. Id. (further explaining that the substantive  
 25 due process guarantee “protects against government power arbitrarily and oppressively  
 26 exercised”). Importantly, the Supreme Court has emphasized that only the most egregious official  
 27 conduct can be said to be “arbitrary in the constitutional sense[.]” See Collins v. City of Harker  
 28 Heights, Tex., 503 U.S. 115, 129, 112 S.Ct. 1061, 1071 (1992). Conscious-shocking conduct

1 does “more than offend some fastidious squeamishness or private sentimentalism about  
 2 combatting crime too energetically[;]” it is conduct “bound to offend even hardened sensibilities.”  
 3 See Rochin v. California, 342 U.S. 165, 172, 72 S.Ct. 205, 209-10 (1952)

4 Plaintiffs assert that defendant’s excessive penalties and enforcement schemes deprive  
 5 them of their property interests<sup>3</sup> in violation of their substantive due process rights under the  
 6 Fourteenth Amendment.<sup>4</sup> (See FAC at ¶ 68). Given the very high standard described in the  
 7 preceding paragraphs, a number of courts facing facts similar to those alleged by plaintiffs in this  
 8 case have found that such allegations are insufficient to state a claim for denial of substantive due  
 9 process. See, e.g., Kelly v. Rice, 375 F.Supp.2d 203, 209 (S.D.N.Y. 2005) (“Nothing about the  
 10 issuance of a parking ticket implicates the rarely-used doctrine of substantive due process.”);  
 11 Yagman v. Garcetti, 2014 WL 3687279, \*3 (C.D. Cal. 2014) (citing Daniels, 474 U.S. at 332, 106  
 12 S.Ct. at 663 (1986)) (“To detect a cognizable constitutional claim from the mere temporary  
 13 deprivation of \$73 ‘would trivialize the centuries-old principle of due process of law.’”). Plaintiffs  
 14 have failed to allege that the City’s ticketing conduct is so arbitrary that it shocks the conscience.  
 15 See, e.g., Peruta v. City of Hartford, 2012 WL 3656366, \*10 (D. Conn. 2012) (“It cannot be said  
 16 that the City’s conduct, in giving Plaintiff a parking ticket for failing to pay, even assuming that the  
 17 plaintiff did not have actual or constructive notice that he had to pay for parking, was ‘arbitrary,’  
 18 ‘malicious,’ or ‘brutal’ in the constitutional sense . . . Nor has Plaintiff alleged that there was any  
 19 improper motive or a purposeful harm.”). Accordingly, the court grants defendant’s motion to  
 20 dismiss plaintiffs’ federal and state substantive due process claims with prejudice.

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 25       <sup>3</sup> Plaintiffs do not specifically explain what property interest they have been denied. (See, generally, FAC at ¶ 67-69). The court assumes they refer to the amounts assessed by parking  
 26 tickets and late fees and/or the additional consequences of towing and impoundment.

27       <sup>4</sup> Plaintiffs do not appear to be asserting a procedural due process claim (see, generally, FAC),  
 28 nor does defendant raise this issue in its Motion, (see, generally, Motion), so the court does not  
 address whether plaintiffs have stated facts sufficient to support such a claim.

1     III. DAMAGES CLAIMS UNDER THE CALIFORNIA CONSTITUTION.

2         The City argues that although plaintiffs allege causes of action under the excessive fines  
 3 and due process clauses of the California Constitution and request damages on both claims, (see  
 4 FAC at ¶¶ 64 & 72), the California Supreme Court has “held that there is no implied cause of  
 5 action for damages for alleged violations of provisions of the state constitution.” (See Motion at  
 6 14 (citing Katzberg v. Regents of Univ. of Cal., 29 Cal.4th 300 (2002)). Plaintiffs counter that their  
 7 claims for relief survive because they also seek declaratory and injunctive relief and, in any event,  
 8 Katzberg was limited to the issue of whether money damages are available for claims of violation  
 9 of a due process liberty interest. (See Opposition to Motion to Dismiss First Amended Complaint  
 10 for Failure to State a Claim upon Which Relief may be Granted (“Opp’n, Dkt. No. 35) at 13).

11         As an initial matter, plaintiffs are correct that their cause of action<sup>5</sup> under the California  
 12 Constitution survives because it seeks declaratory and injunctive relief. (See FAC at ¶¶ 65-66).  
 13 One specific component of the relief it requests, however, is “damages, including restitution of the  
 14 amounts of any penalties and collection fees paid to the city.” (See id. at ¶ 64). The analysis  
 15 below addresses whether that component is available to plaintiffs.

16         As plaintiffs suggest, Katzberg was limited to the narrow issue of whether money damages  
 17 are available for a violation of the due process liberty interest and “did not address the issue of  
 18 whether money damages are permissible remedies for violation of the due process property  
 19 interest.” San Joaquin Deputy Sheriffs’ Ass’n v. Cnty. of San Joaquin, 898 F.Supp.2d 1177, 1189-  
 20 90 (E.D. Cal. 2012) (emphasis in original) (citing Walls v. Central Contra Costa Transit Auth., 2012  
 21 WL 581362, \*3 (N.D. Cal. 2012). Katzberg makes clear, however, that constitutional tort damages  
 22 remedies are the exception, not the rule. See 29 Cal.4th at 311 (“only two decisions . . . have  
 23 recognized an action for damages to remedy a violation of the state Constitution. All subsequent  
 24 decisions addressing the issue have declined to find such an action for damages.”).

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 27         <sup>5</sup> In this section, the court considers only plaintiffs’ cause of action seeking relief for violation  
 28 of California’s excessive fines provision, see supra at § I, as its other California cause of action  
 is dismissed. See supra at § II.

1       While the Katzberg court's discussion may have been limited to the issue of due process  
 2 liberty interests, the California Supreme Court has laid out a more general method for evaluating  
 3 whether damages claims are available under other provisions of the California Constitution. First,  
 4 a court "begin[s] [its] inquiry by asking whether, when the constitutional provision at issue was  
 5 adopted, the enactors intended that it include a damages remedy for its violation." Katzberg, 29  
 6 Cal.4th at 317 (emphasis in original). Second, when a court does not "discover[]" any basis for  
 7 concluding that a damages remedy was contemplated . . . [and] also [does] not discover[] any  
 8 basis for concluding that a damages remedy was intended to be foreclosed[,]" courts "shall  
 9 proceed to consider whether a constitutional tort action for damages to remedy the asserted  
 10 constitutional violation should be recognized." See id. at 324. That involves consideration of a  
 11 number of factors, including "the adequacy of existing remedies" (id. at 325), "the extent to which  
 12 a constitutional tort action would change established tort law" (id. at 327), and "the nature of the  
 13 provision and the significance of the purpose that it seeks to effectuate" (id. at 328). Even then,  
 14 the inquiry does not end, because if a court finds that these factors favor "recognition of a  
 15 constitutional tort," a court should "also consider the existence of any special factors counseling  
 16 hesitation in recognizing a damages action, including deference to legislative judgment, avoidance  
 17 of adverse policy consequences, considerations of government fiscal policy, practical issues of  
 18 proof, and competence of courts to assess particular types of damages." (Id. at 329).

19       The Katzberg analysis is applicable to this case insofar as it decided, under the first step  
 20 described above, that there is no evidence in the language or history of article I, § 7(a) – the due  
 21 process provision – from which the Supreme Court found "an implied right to seek damages[.]"  
 22 See Katzberg, 29 Cal.4th at 324. The question remains, then, "whether a constitutional tort action  
 23 for damages to remedy the asserted constitutional violation should be recognized." Id. at 324; see  
 24 also San Joaquin, 898 F.Supp.2d at 1190 ("the Court in Katzberg found that 'courts, exercising  
 25 their authority over the common law, may, in appropriate circumstances, recognize a tort action  
 26 for damages to remedy a constitutional violation.') (citation omitted). Given the paucity of case  
 27 law finding monetary damages available for constitutional violations in California, and given that  
 28 "a deprivation of property is a less egregious loss than a loss of liberty," San Joaquin, 898

1 F.Supp.2d at 1190, the court concludes that no claim for money damages for violation of the  
 2 excessive fines clause of the California Constitution is available under the circumstances of this  
 3 case.

4 Whether this also forecloses plaintiffs' claims for "restitution of the amounts of any penalties  
 5 and collection fees paid to the City," (see FAC at ¶ 64), is a more difficult question. On the one  
 6 hand, the California Supreme Court has noted the "traditional distinction between restitution and  
 7 damages[.]" See, e.g., Cortez v. Purolator Air Filtration Prods. Co., 23 Cal.4th 163, 172 (2000).  
 8 Further, common sense suggests that returning any sums of money collected is an appropriate  
 9 remedy in a case alleging that the sums were unconstitutionally high. On the other hand,  
 10 however, as the City points out, "[p]ublished decisions cannot be found in which a party paid a  
 11 fine, then obtained a ruling that the fine violated the 'Excessive Fines' prohibition . . . and was for  
 12 that reason refunded that portion of the fine which was not constitutionally excessive." (See  
 13 Motion at 10). There are cases, for example, in which an appeals court has found that a certain  
 14 fine imposed by a lower court is constitutionally excessive and orders the fine reduced. See, e.g.,  
 15 People v. Blackburn, 72 Cal.App.4th 1520, 1524 (1999) (finding that the fine "was in excess of the  
 16 statutory maximum[,] and modifying it "by reducing the fine" by 50%). Yet, plaintiffs offer no case  
 17 law, nor has the court found any, in which a California court required a public entity to return  
 18 money paid to it because the money was paid in violation of the excessive fines clause. (See,  
 19 generally, Opp'n).

20 Under the circumstances, the court will dismiss plaintiffs' request for restitution under  
 21 California's excessive fines clause with leave to amend. If plaintiffs re-allege this claim in their  
 22 Second Amended Complaint, they should consider this issue more carefully, i.e., not Katzberg's  
 23 holding regarding liberty interests, but the availability of a restitution remedy for the specific  
 24 constitutional claim alleged here.

25 IV. CALIFORNIA CLAIMS FILING REQUIREMENTS.

26 Finally, the City seeks to dismiss the substantive state law claims asserted by the additional  
 27 plaintiffs because they failed to comply with the California Tort Claims Act. (See Motion at 15-16).  
 28 Cal. Gov. Code § 945.4 provides that "no suit for money or damages may be brought against a

1 public entity . . . until a written claim therefor has been presented to the public entity[.]” Unless a  
 2 specific exception applies, ‘[a] suit for ‘money or damages’ includes all actions where the plaintiff  
 3 is seeking monetary relief, regardless whether the action is founded in tort, contract or some other  
 4 theory.” Lozada v. City and Cnty. of San Francisco, 145 Cal.App.4th 1139, 1152 (2006) (internal  
 5 quotation marks and citations omitted).

6 The court need not reach this issue, as the court has dismissed all of plaintiffs’ monetary  
 7 claims under the California Constitution. Yet, even if they survived or if plaintiffs re-allege the  
 8 claims in an amended complaint, “claimant,” as used in section 910 [of the California Tort Claims  
 9 Act], must be equated with the class itself and therefore [courts] reject the suggested necessity  
 10 for filing an individual claim for each member of the purported class.” City of San Jose v. Super.  
 11 Ct., 12 Cal.3d 447, 457 (1974). As defendant acknowledges, Pimentel and Welch have complied  
 12 with the reporting requirements of the California Tort Claims Act. (See Motion at 16).

13 **This Order is not intended for publication. Nor is it intended to be included in or**  
 14 **submitted to any online service such as Westlaw or Lexis.**

#### **CONCLUSION**

16 Based on the foregoing, IT IS ORDERED THAT:

17 1. Defendant’s Motion to Dismiss the First Amended Complaint for Failure to State a Claim  
 18 for Which Relief May be Granted (**Dkt. No. 32**) is **granted in part** and **denied in part**, as follows:

19       A. The Motion is **denied** with respect to Plaintiffs’ first cause of action for violation  
 20 of the Excessive Fines provision of the federal Constitution;

21       B. The Motion is **granted** with respect to Plaintiffs’ second cause of action for  
 22 violation of the Excessive Fines provision of the California Constitution, but only to the  
 23 extent that it seeks monetary relief; and

24       C. The Motion is **granted** with respect to Plaintiffs’ third and fourth causes of action  
 25 for violations of the due process clauses of the federal and California Constitutions. These  
 26 claims are dismissed with prejudice.

27 2. Plaintiffs are granted until **October 12, 2015** to file a Second Amended Complaint  
 28 attempting to cure the defects outlined by the court above.

3. The Second Amended Complaint must be labeled "Second Amended Complaint," filed in compliance with Local Rule 3-2 and contain the case number assigned to the case, i.e., Case No. CV 14-1371 FMO (Ex). In addition, plaintiffs are informed that the court cannot refer to a prior pleading in order to make their Second Amended Complaint complete. Local Rule 15-2 requires that an amended pleading be complete in and of itself without reference to any prior pleading. This is because, as a general rule, an amended pleading supersedes the original pleading. See Loux v. Rhay, 375 F.2d 55, 57 (9th Cir. 1967), overruled in part, Lacey v. Maricopa Cnty., 693 F.3d 896 (9th Cir. 2012) (en banc).

4. Plaintiffs are cautioned that failure to timely file a Second Amended Complaint may result in this action being dismissed without prejudice for failure to prosecute and/or failure to comply with a court order. See Fed. R. Civ. P. 41(b); Link v. Wabash R.R. Co., 370 U.S. 626, 629-30, 82 S.Ct. 1386, 1388 (1962).

5. Defendant shall file its Answer to the Second Amended Complaint or another motion pursuant to Fed. R. Civ. P. 12 no later than **October 26, 2015**.

6. In the event defendant wishes to file another motion to dismiss, then counsel for the parties shall, on **October 19, 2015**, at 10:00 a.m.<sup>6</sup> to discuss defendant's motion to dismiss. Defendant's motion must include copies of all meet and confer letters as well as a declaration that sets forth, in detail, the entire meet and confer process (*i.e.*, when and where it took place, how long it lasted and the position of each attorney with respect to each disputed issue that will be the subject of the motion). Failure to include such a declaration will result in the motion being denied.

Dated this 29th day of September, 2015.

/s/  
Fernando M. Olguin  
United States District Judge

<sup>6</sup> Counsel may agree to meet and confer at another time and place without seeking court approval for such an agreement.